

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - SEPTEMBER 19, 2001**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 5:30 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate, and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSION:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:
CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

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|------------------------------|--|
| Legal Authority: | Government Code 54956.8 & 54956.9(a) & (c) (1 potential case) |
| Real Property(ies) involved: | APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property) |
| City Negotiators: | Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel |
| Case Name: | San Jose Christian College v. City of Morgan Hill |
| Case Number: | Santa Clara County Superior, No. CV 799179 |
| Closed Session Topic: | Potential Existing Litigation/Real Estate Negotiations |

2.

CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR

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| Legal Authority: | Government Code 54956.8 |
| Real Property Involved: | 17.58 acre parcels located on the east side of Condit Road, bound by Condit Road, Tennant Avenue, Barrett Avenue and Murphy Avenue (APN 817-13-017) |
| Negotiating Parties: | |
| For City/Agency: | City Manager/Executive Director; City Attorney/Agency Counsel; Director of Business Assistance & Housing Services |
| For Property Owners: | Virginia Lomanto Trustee |
| Closed Session Topic: | Acquisition of Real Property |

3.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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| Significant Exposure to Litigation/Initiation of Litigation | |
| Authority: | Government Code Section 54956.9(b) & (c) |
| Three (3) Cases | |

4.

CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR

Legal Authority: Government Code 54956.8
Real Property Involved: 8.14 acres at NW corner of Diana Ave and Butterfield Blvd (APN 726-12-006)
Negotiating Parties:
 For City/Agency: City Manager/Executive Director; City Attorney/Agency Counsel; Director of Business Assistance & Housing Services
 For Property Owners: Kontra Becki Associates I
Closed Session Topic: Acquisition of Real Property

5.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Name of Case: City of San Jose v. Morgan Hill Unified School District, City of Morgan Hill
Case Number: Superior Court, County of Santa Clara CV794073

6.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority: Government Code 54956.9(a)
Title: Interstate Trust Deed Services, Inc. v. City of Morgan Hill
Case No.: Orange County Superior Court, 01CC05281

7.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority: Government Code 54956.9(a)
Title: Adriana Juarez, et al. v. City of Morgan Hill
Case No.: Santa Clara County Superior Court, CV 793577

8.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority: Government Code 54956.9(a)
Case Name: San Jose Christian College v. City of Morgan Hill, Dennis Kennedy, Greg Sellers, Larry Carr, Steve Tate and Hedy L. Chang
Case Number: United States District Court, Northern District of California, No. CO1-20847
Closed Session Topic: Existing Litigation

9.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure to Litigation
Authority: Government Code Section 54956.9(b)
One (1) Case

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 5:35 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken on the above listed closed session items as they were continued to the conclusion of this evening's agenda.

SILENT INVOCATION

Mayor/Chairman Kennedy commented on the terrible tragedy that occurred in New York City and Washington, D.C. He indicated that he attended a memorial service in San Jose last Thursday evening in which religious leaders spoke about the need for love and working together. It was indicated that religions do not condone such terrible atrocities. He felt that everyone needs to recall the principals and values upon which this country was founded such as equality and justice for all and that the country not lose sight of these as we work toward recovering from this tragedy.

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Jerry Denny led the Pledge of Allegiance.

Mayor Kennedy presented a slide show prepared by his wife, Eileen Kennedy, entitled "Think it over."

INTRODUCTIONS

City Manager Tewes introduced Mary Kaye Fisher, *Human Resources Director*, and Director of Public Works Ashcraft introduced David Gittleson, *Associate Engineer*; new employees to the City of Morgan Hill.

The introduction of Charnell Mumford, Human Resources Assistant, was deferred to a future meeting.

RECOGNITIONS

Mayor Kennedy indicated that the City of Morgan Hill was successful in its recycling efforts and achieved the state-mandated goal of 50%, achieving 53% waste reduction. He presented Certificates of Recognition to the Citizen's Solid Waste Advisory Committee: Tom Berghoff, Jerry Denny, Janet Figueroa, and Sharon Purser for the *Community-wide Recycling Achievement*. Also, recognized was Julie Osborne, South Valley Refuse and Disposal, for their hard work and what they have done with this program.

Carol Bird, Santa Clara County Green Business Program and Mayor Kennedy presented Certificates of Recognition to Eco-Care Professional Housecleaning (*Santa Clara County Green Business Program Recognition*).

CITY COUNCIL REPORT

Council Member Tate addressed the following: 1) Library committee and staff are getting ready to submit a Proposition 14 application in order to receive funds from the state to build a state of the art library. Several meetings have been held the last couple of months with the School District partnering with the City in the application. The vision is to use the new library for a literacy program, a homework center, and a home schooling program. 2) A public forum is scheduled tomorrow evening on the updated fire and emergency medical service master plan. The task force has been working together for approximately a year and indicated that the master plan is close to being finalized and be presented to the City Council. Before receiving city council approval, public input will be sought regarding the master plan. The task force is proposing the addition of another fire station in the community with significant capital investments both for the property and the building. 3) The City-School Liaison Committee met on September 11, 2001. With the settlement of the lawsuit of the Sobrato High School, he felt that there is a need for the City and the School District to work together in putting another agreement in place in terms of the City providing service to 30 acres outside the Sobrato site. Also, discussed was the City's proposal for providing aid to teachers. 4) Youth Health and Safety Committee: This is a community wide advisory committee established by Mayor Kennedy in the spring. At this meeting, 40 development assets were introduced and have since been adopted by the City of Morgan Hill as a guide for youth safety and development. The committee is working toward the implementation of the 40 developmental assets for the community's youth. This program is being continued with the next meeting to be held on September 24, concentrating efforts on defining a specific implementation program(s). The City Council is working toward providing recreation facilities for youth, some of which are years away. He felt that there were other things that can be done in the interim that would be asset building activities for the youth. 5) He expressed his appreciation for the activities held last Friday following the tragic disaster. He acknowledged the work by the Chamber of Commerce as the organizer, with City workers participating. He also acknowledged the work performed by the Kaiwanis Club of installing U.S. flags along Monterey Road and indicated that Eddie Bauer organized the event. He thanked Mayor Pro Tempore Sellers for doing an excellent job in expressing how everyone felt.

CITY MANAGER'S REPORT

City Manager Tewes stated that he did not have a City Manager's report to present this evening.

CITY ATTORNEY'S REPORT

City Attorney Leichter also stated that she did not have a report to present this evening.

PUBLIC COMMENT

Mayor Kennedy presented Lisa Pampuch with a Certificate of Recognition as she leaves the Morgan Hill Times and covering local government.

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

CONSENT CALENDAR:

City Council Action

Council Member Tate requested that item 7 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **approved** Consent Calendar Items 1-10 as follows:*

1. **AUGUST 2001 FINANCE AND INVESTMENT REPORT**

Action: ***Accepted*** and ***Filed*** Report.

2. **APPROVAL OF RIGHT-OF-WAY PURCHASE AGREEMENTS FOR BUTTERFIELD EXTENSION, PH IV PROJECT (APN: 817-30-049 and 817-57-003)**

Action: ***Authorized*** the City Manager to Execute Purchase Agreements with the Owners of APNs 817-30-049 and 817-57-003 for Total Compensation of \$586,988 Plus Escrow and Closing Costs for the Acquisition of These Properties.

3. **VACATION OF A PORTION OF SAN RAMON DRIVE - Resolution No. 5526**

Actions: 1) ***Adopted*** Resolution No. 5526 Thereby Vacating a Public Right-of-way Adjacent to APN 817-60-001, at the Corner of San Ramon Drive and San Pedro Avenue, and 2) ***Directed*** the City Clerk to File a Certified Copy of Resolution No. 5526 in the Office of the Recorder of Santa Clara County.

4. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9085, RIO SERENO SUBDIVISION - Resolution No. 5527**

Actions: 1) ***Adopted*** Resolution No. 5527 Accepting the Subdivision Improvements Included in Tract 9085, Commonly Known as Rio Sereno, and 2) ***Directed*** the City Clerk to File a Notice of Completion with the County Recorder's Office.

5. **RESOLUTIONS APPROVING THE CITY'S PARTICIPATION IN THE PERCAPITA GRANT PROGRAM AND THE ROBERTI-Z'BERG- HARRIS (RZH) URBAN OPEN SPACE AND RECREATION GRANT PROGRAM - Resolution Nos. 5528 and 5529**

Actions: 1) ***Adopted*** Resolution No. 5528 Approving the City's Participation in the Per Capita Grant Program, and 2) ***Adopted*** Resolution No. 5529 Approving the City's Participation in the Roberti-Z'Berg - Harris (RZH) Urban Open Space and Recreation Grant Program.

6. **APPROVAL OF NEGATIVE DECLARATION AND EASEMENT AGREEMENT FOR BURNETT WATERLINE**

Actions: 1) ***Approved*** Mitigated Negative Declaration, and 2) ***Approved*** Agreement with the County of Santa Clara to Purchase Waterline Easement Across County Park Land and Authorize the City Manager to Execute Agreement.

8. **APPOINTMENT TO THE HOUSING ELEMENT ADVISORY COMMITTEE**
***Actions:** Authorized the Mayor to Appoint the Listing of Individuals to Serve as Members of the Housing Element Advisory Committee.*
9. **GENERAL PLAN AMENDMENT AND URBAN SERVICE AREA AMENDMENT APPLICATIONS**
***Action:** Rescheduled Hearings on the 2001 Urban Service Area Applications and General Plan Amendment Applications to December 5, 2001.*
10. **SPECIAL CITY COUNCIL MEETING MINUTES OF AUGUST 29, 2001**
***Action:** Approved the Minutes as Written.*
7. **APPRAISAL OF FORMER SAINT LOUISE HOSPITAL PROPERTY**

City Manager Tewes presented the staff report.

Council Member Tate stated that he could not support the eminent domain action on the hospital, therefore, he could not support the motion.

***Actions:** On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council, on a 4-1 vote with Council Member Tate voting no: 1) Appropriated \$37,000 from the General Fund Reserves, and 2) Approved a Contract with Hulberg & Associates, Inc. for Appraisal of the former Saint Louise Property.*

City Council and Redevelopment Agency Action

City Clerk Torrez requested that agenda item 13 be removed from the consent calendar, indicating that the September 5, 2001 minutes would return to the City Council at a future meeting.

11. **SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF AUGUST 29, 2001**
***Action:** Approved the Minutes as Written.*
12. **JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF SEPTEMBER 5, 2001**
***Action:** Approved the Minutes as Written.*
13. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF SEPTEMBER 5, 2001**
***Action:** By consensus, the City Council unanimously (5-0) Continued the Approval of Minutes to a future meeting date.*

Redevelopment Agency Action

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Commission unanimously (5-0) **approved** Consent Calendar Item as follows:*

14. LEASE/PURCHASE OF PROPERTY AT 1250 BARRETT AVENUE

Action: *1) **Authorized** the Executive Director to Negotiate, Prepare, and Execute a 15-year Ground Lease and Option to Purchase Agreement and any other Related Documents with the Owner of 8.8 Acres at 1250 Barrett Avenue (APN: 817-13-017, Lot 28), and 2) **Authorized** the Executive Director to Do Everything Necessary and Appropriate to Make Payments per the Ground Lease Agreement, Not to Exceed \$1.86 Million Plus Closing/escrow Costs and Lease Payments which Allow the Owner a 5% Return on the Purchase Price over the Life of the Ground Lease and Closing/escrow Costs.*

City Council Action

PUBLIC HEARINGS:

15) ZONING AMENDMENT APPLICATION ZA-01-02: CAMPOLI - COX - Ordinance No. 1533, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Zoning Amendment Ordinance No. 1533 New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1533, New Series by Title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 3.23 ACRES, LOCATED ON THE NORTH SIDE OF CAMPOLI DRIVE, BETWEEN MADRONE ROAD (OLD MONTEREY ROAD) AND HALE AVENUE FROM COUNTY A-SR TO CITY R-1 (7,000). (APNs 764-24-006, 007, 008 AND 009 by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

16. ZONING AMENDMENT APPLICATION ZA-01-04: MONTEREY ROAD - CHRISTENSEN - Ordinance 1532, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. Jeff Gilman, CB Richard Ellis, representing the property

owners of parcel 005, indicated the property owners' support of the zoning amendment. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Zoning Amendment Ordinance No. 1532, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1532, New Series by Title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 20.55 ACRES LOCATED ON THE EAST SIDE OF MONTEREY ROAD, BETWEEN TENNANT AVENUE AND WATSONVILLE ROAD. (APNs 817-06-004, 005, AND 006 by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

17. RESOLUTION ESTABLISHING FEES FOR MASSAGE ESTABLISHMENT, MANAGING EMPLOYEE AND MASSAGE PRACTITIONER PERMITS - Resolution No. 5522

Chief of Police Schwab presented the staff report. He stated that it is anticipated that the amount of staff time to be spent conducting background investigation for the three different categories would be different. He noted that the fee calculation for the message establishment permit would require a site visit in order to verify compliance with the ordinance which does not hold true in the other categories. Staff anticipates being able to complete the focused background investigation in the other two categories in less time.

Mayor Pro Tempore Sellers stated that this whole effort came about because there were some illegitimate message establishments that were beginning to take a fair amount of time from the Police Department. It is proposed to institute this ordinance so that the City would be able to alleviate the problem and expenditure of time. He noted that funds were not being collected for illegitimate practices. He stated his support of the fee structure but expressed concern with the fees and that the city not unduly punish legitimate establishments with costs that might be more onerous than necessary.

Chief of Police Schwab stated that it was his belief that the fees being proposed are in line with others charged by other communities. He said that the fees are being presented to the City Council based on the city's policy that fees be established to recuperate 100% of the cost for service. However, he indicated that the fee ordinance allows City Council discretion not to recover 100% of the cost for service.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers stated that he was concerned that the city was addressing the problem by placing another fee on individuals in the community who did not have to pay a fee previously in order to operate their legitimate businesses. He felt that the fees would increase the value of their work by

making it a legal establishment and by not diminishing their value in the community because of the potential of having illegitimate establishments. For this reason, he felt that it was worth undertaking the procedure, combined with the fact that the background check would give the public an added sense of security when they contract for message services.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5522, Establishing Fees for Massage Establishment, Managing Employee and Massage Practitioner Permits.*

18. ZONING AMENDMENT, ZA-01-03: CITY OF MORGAN HILL - ZONING TEXT AMENDMENT (Continued from August 15, 2001) - **Ordinance No. 1515, New Series**

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing.

Tom Beattie, 16210 Keith Way, presented the City Council submitted photographs of various code violations. He felt that the proposed ordinance would be an infringement to the rights of a homeowner and that less government interference was needed. He noted that this is a boating and recreational community with homeowners paying personal and property taxes, including Department of Motor Vehicle fees for trailers. He felt that property values would be reduced by approximately \$25,000 should homeowners not be allowed to park boats/recreational vehicles on one's property.

Michael Macierski, 17230 Grand Prix Way, felt that the proposed ordinance is an intrusion to an individual's right to store a boat on private property to which fees were paid. He said that he would tolerate his neighbors' indiscretions rather than tolerate having any further authority or enforcement actions.

Peter Burkat, 16360 Monterey Road, stated that he agreed to work with city staff regarding proposed changes to the ordinance in his capacity as an attorney over a month ago. He indicated that he did not receive the proposed changes until Monday. He has reviewed the proposed changes and expressed concern that his previous concerns were not addressed. He felt that the proposed amendments remain ambiguous and infringe on individuals' personal rights. He informed the City Council that he represents a client who owns a boat cited for having a boat in his front yard. He felt that the code was written so ambiguously that it could be interpreted to state that an individual can have a boat, trailer or other vehicles properly registered and self propelled, not necessarily on land, stored on private property. He said that this interpretation resulted in the proposed zoning text amendments. He felt that the percentage of complaints were relatively small when compared to total population. He noted that the changes he received referenced three out of eight communities stating that boats, campers and other vehicles cannot be stored. He studied the codes adopted for not only the eight communities but the surrounding municipalities. He was able to review 13 city codes, noting that not one prohibits storage of vehicles. He stated that the City of Los Gatos does not have an absolute prohibition. Los Gatos allows storage of vehicles as long as it was less than 23 feet in length and parked on a paved surface. He felt that staff's reading of Saratoga's regulation that limits the parking of boats, trailers, recreational vehicles for no more than five days were incorrect. It was his interpretation that Saratoga's code states that you cannot have a parked vehicle that someone will live in for more than

five days. If Morgan Hill passes the ordinance, the City will become a police state which will make the community a distasteful place to live.

Mark Grzan, 680 Alamo Drive, felt that the City is about to pass the most restrictive policy of any municipality in the south bay. This ordinance would be costly and burden residents. It was his belief that most residents do not know of the existing restrictions. He referred to the restriction of parking of oversized vehicles in residential streets for more than 10 hours, an impossibility. He stated that most residents are aware of the 50% pave surface limitations. He noted that the ordinance would prohibit the storage of shovels in yards for more than 72 hours. Further, you would not be able to drop compost in yards for more than 72 hours and that you have to have an approved driveway prior to parking your recreational vehicle. He expressed concern with the fence height required to screen stored vessels/vehicles which may result in a conflict with the existing six-foot fence height restriction. He said that there are a number of other cities that do not have regulations as is seen in Morgan Hill and felt that this was unfair to residents. He requested that the City Council repeal or send the proposed ordinance amendments to a task force who would return with a reasonable and enforceable code.

Kirk Browsr, 465 Calle Asta, indicated that he purchased his home with side yard access. He stated that he is in compliance with storing his travel trailer behind his six-foot fence, away from the public view, 50 feet from the sidewalk. He stated that he could not shrink his trailer in order to screen it behind his six-foot fence. He found it incredible that the city would send law enforcement officers to collect fines from individuals who will not be in compliance with the code.

Brad Weightman, 805 Eninco Drive, concurred with Mr. Browsr's comments and requested that the City Council consider costs in this economic downturn and what it will do to the community. He felt that this ordinance would pit neighbors against neighbors and would make streets unsafe as vehicles would now be parked on streets versus private property. He requested that the City Council reconsider the proposed text amendments and make this a community that he would like to reside in for a long time.

Belanda Rianda, 15635 Via Castana, considers the proposed amendment as a major hardship and infringement of her rights as a homeowner. She stated that she purchased her home with a large concrete driveway that was advertised as having RV parking by the builder. She stated that her 22-foot RV is parked more than 20 feet from the sidewalk, is operable, licensed and in no way considered a hazard to anyone walking down the street. She said that a problem may be that there are not enough storage facilities for RVs to be stored in Morgan Hill, noting that individuals cannot afford rental fees even if more were to be built. She did not believe that the ordinance should be selectively enforced as most people cannot afford rental facilities.

Jerry Stuefloten, 910 Via Del Castillo, stated that his wife bought him a travel trailer upon his retirement in order for him to write a book. He stated that he has a six-foot side yard, therefore, his travel trailer would not fit. He said that he looked into storage and discovered that should he store his travel trailer, every four years he would pay for it again. He felt that the City Council needs to know that when ordinances are adopted, you change peoples' dreams and lives in ways that were not contemplated. He still wants to write his book and celebrate life where it is "a little bit country and free." He requested that the City Council reject the proposed ordinance and take a look at what the

citizens in Morgan Hill can do with their boats and RVs that make lives rich and rewarding.

Armand Perry, 750 Roble Drive, felt that this is becoming a fascist regime. He stated that he worked for the City for 23 years and that he has not seen a council telling him what to do with his property. He stated that he has been storing a motor home on his property since 1974 without a code enforcement officer visiting his home during this period. Now, the city is proposing to have a code enforcement officer will come to his home and cite him. He noted that the current ordinance contains a penalty phase. He did not believe that citizens were advised that the City will pursue the penalty phase. He felt that the ordinance was confusing.

No further input being offered, the public hearing was closed.

Mr. Bischoff stated that a faxed letter with the proposed draft ordinance was sent to Mr. Burkat on September 4 and that staff followed up with him to try to receive his comments with no success. He stated that staff spoke with planners at the various cities to determine their regulations. He clarified that it is not the intent of the ordinance to preclude storage of recreational vehicles/boats in side yards. He said that trailers/boats may extend above a six-foot fence as the majority of the vehicle would be stored. He said that recreational vehicles parked in driveways are not violations with the prior or proposed ordinance amendment.

City Manager Tewes said that Mr. Burkat, in representing someone who had received a citation, suggests that there is ambiguity in the restrictions. Staff has attempted to address the ambiguity in defining what is a front yard and what is a similar type vehicle. He noted that this language and the regulations have been in place for decades. The purpose of the proposed ordinance is to make the regulations clearer. He stated that these regulations are to enforce community standards that are established by the community. He said that the City is not actively seeking violations to the ordinance and is issuing citations only when something is so egregious that it violates the community and neighborhood standards are identified on a complaint basis.

Council Member Chang referred to page 209, item 2, and expressed concern with storage of garden tools and landscaping supplies in the front yard setbacks. She stated that neighbors could complain about garden tools being stored more than 72 hours. She recommended that the ordinance be better defined.

Council Member Carr referred to the chart located on page 211 relating to complaints filed. He asked if there were complaints relating to side yard storage? Mr. Bischoff stated that he was not aware of any complaints about vehicles stored in side yards. If there have been complaints about side yard storage, they have been few in numbers. The complaints identified were ones relating to front yard storage. He clarified that vehicles over six feet in height can be stored in the side and rear yards as long as they are setback five feet from the side and rear property lines and screened by a six-foot fence. He stated that camping trailers are not allowed to be stored in the front yard, nor camper shells unless on top of a truck in the existing or proposed ordinance amendment.

Council Member Tate stated that he has heard that people are emotionally attached to their property and their rights to their property. However, he has not heard a great deal of disagreement between property owners and what staff is trying to accomplish. He noted that staff is trying to accomplish

clarification of a code that is already in place. He did not hear anyone speak against the few minor modifications to the code being proposed. Citizens were speaking against the code as it exists today as though it would be enforced at all times. He felt that the City Manager did a good job in explaining that it is only the egregious kinds of situations where the city would want to enforce the ordinance. It was his belief that there was disagreement from those individuals who spoke that you could enforce the ordinance selectively and may be pitting neighbors against neighbors. However, he felt that there were egregious situations that exist in the community. What he is hearing is that staff tried to clarify the ordinance and that the city did not get there. Citizens are reading the ordinance and not understanding that it will not be enforced at all times. He recommended that the city continue to work on clarifying the ordinance and that a group be put together and propose further clarifications.

Mayor Kennedy noted that a speaker suggested the formation of a citizen committee to work with staff to further clarify the ordinance. He stated that it is a city goal to try to balance the need of the members of the community who like to have an aesthetically clean front yard from those who have vehicles that need storage such as recreational vehicles, campers, etc. The city is trying to come up with an ordinance that would create a balance. He recommended that a committee be created consisting of citizens, including individuals who have filed complaints to work with staff and try to resolve this issue.

Mayor Pro Tempore Sellers stated that he had some concerns with the ordinance as he read through it. He stated that the only reason you have laws is to protect one another or to be able to do things collectively that cannot be done individually. In this case, the goal is to try and figure out a way to prevent the worse case scenario. This has to be done in a way that everyone is not being punished. He said that there are public safety hazards and other hazardous concerns associated with vehicles parked on non paved surfaces. He stated that he understood the goal of stating that fences cannot be greater than six feet in height and yet expect to screen vehicles. He felt that these two issues are at odds and that there needs to be some clarification. He also felt that there has to be a better definition of "screening." He recommended that the City look at ways of resolving these kinds of problems without unduly impinging on the rest of the community.

Mayor Kennedy stated that one of the things that triggered the ordinance amendment is the fact that there have been several major problems where some residences have been left in a state of disrepair with construction material and debris. The City has been placed under a lot of pressure to do some code enforcement to clean up the extreme violators. It was his belief that staff was trying to strike a balance and to follow the direction given by the City Council to enforce some of the City's codes and to clean up some of the grossly unsightly areas. The City was not trying to impose additional government regulations but to correct some of the problems that exist. He felt that it would be helpful to do some more work on this ordinance and to hear individual input.

Mayor Pro Tempore Sellers asked if would make sense to have an existing organization within the city to review the ordinance such as the Architectural and Site Review Board (ARB)?

City Attorney Leichter stated that there are two issues that the City Council needs to deal with. She stated that the city does not have the time nor money to do severe code enforcement. She noted that the photos presented this evening are the most egregious cases. She indicated that the proposed ordinance amendment was precipitated by a complaint on one of the most egregious cases. Staff is

making an attempt to clarify the ordinance. The Council needs to come to terms with the philosophical discussion of what it wants in the front yard. She indicated that a vehicle that cannot be driven and is being parked in the front yard is a clear enforcement tool. She reminded the Council about the situation 18 months ago when the city was wrestling with the problem of the oversized RVs parking directly on the street and trying to cure this. She said that there was a great amount of community concern at that time. Since that time, there have only been two complaints received about its enforcement policy. If the city becomes too aggressive from a code enforcement perspective, she felt that the City would hear from its citizens. She felt that staff may be recommending that the City implement the ordinance for six months to see if the city is being too aggressive or whether the ordinance is felt to be unworkable. She was not sure who staff would suggest that the City Council refer review to at this time.

Council Member Carr concurred that there may be some semantics confusion. He felt that the suggestion of looking at ways to explain and clarify the ordinance is a good one. He heard citizens indicating that they are not currently in compliance with the existing ordinance, noting that they are not being cited, towed or fined. He stated that he has a problem with having an ordinance that is not being enforced and felt that there needs to be discussion about this. He requested further clarification as to how the enforcement is conducted. He could support a trial period to see if enforcement is working or whether it is too aggressive. He agreed that there were health and safety issues that need to be taken into account. He supported Mayor Kennedy's suggestion of putting together a citizens group to look at the ordinance. He suggested that the real estate community be represented in the discussions as their selling point advertises RV and boat parking that may not be in compliance with the ordinance.

Council Member Chang agreed to work with the committee as the City Council's representative to come up with an ordinance that is workable.

Mayor Kennedy felt that speakers interested in serving on the committee would be helpful.

Mayor Pro Tempore Sellers recommended that Council Member Chang convene a citizens group to review the ordinance and return to the City Council with a recommendation. He further recommended that the City keep in mind the worst situation and how it can be avoided and that definitions be clarified in order to protect the health and safety of the community.

Mr. Bischoff informed the City Council that the Planning Commission is obligated by state law to provide recommendations to the City Council. If the city is looking at significant changes to the ordinance, he asked if the City Council would want the recommended changes to go back to the Planning Commission prior to City Council review?

Action: *It was the consensus of the City Council **to refer** major changes to the Planning Commission prior to coming before the City Council.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Tabled** this item.*

OTHER BUSINESS:

19. ADOPTION OF 2001-02 WORKPLAN

Assistant to the City Manager Dile presented the staff report.

Council Member Carr asked if the workplan is being made available to the public at large so that the public can see the amount of work and the scope of work that is going on in the city? Ms. Dile stated that staff has not conducted a special marketing of the workplan as it is used largely to guide internal work. She noted that one of the City Manager's workplan item is to look at the City's communication and marketing effort. This may be something that should be incorporated in this effort.

Council Member Carr noted that Council Member Tate, in his report earlier this evening, spoke about the upcoming youth, health and safety summit. He indicated that one of the actions being undertaken by the City Council is the adoption of the 40 Developmental Assets. It is hope that as the City goes through the workplan and looks at all of the different programs and design that the Development Assets are incorporated.

Mayor Kennedy concurred with Council Member Carr's comments. He complimented staff for putting the workplan together.

Council Member Tate stated that he could not help being overwhelmed by the comments as presented by the new Human Resources Director's comments about seeing smiles on employees' faces while producing the workplans and preparing for next year's workplan.

Mayor Pro Tempore Sellers felt that the Taste of Morgan Hill was a great way to talk about the activities/projects to be undertaken by the City and provide interaction where citizens could comment on projects. He asked if similar efforts were being contemplated this year? He requested that the quarterly reports include the City's financial standing.

Ms. Dile indicated that there has been a substantial staff effort, including representatives from all departments, for many months planning for the Taste of Morgan Hill.

Council Member Chang concurred with the comments expressed by her fellow Council Members and felt that the City has a good management team.

Action: *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Approved** the 2001-02 Workplan.*

20. STATUS REPORT FROM SANTA CLARA VALLEY WATER DISTRICT ON RESOLVING SAN PEDRO PERCOLATION POND HIGH GROUNDWATER PROBLEM

Director of Public Works Ashcraft presented the staff report. He indicated that a letter was received dated September 14 signed by Santa Clara Valley Water District (SCVWD) Board Member Sig Sanchez apologizing for the delay of making a presentation to the City Council. Mr. Sanchez indicates that SCVWD staff will be able to make a presentation to the City Council on October 17. He noted that the letter raises a new issue not contemplated before in that it may be the recreational

use of the ponds that could eliminate some of the potential methods of solving the high ground water problems.

Council Member Carr stated that the letter from Board Member Sanchez was addressed to him. He indicated that a tour was conducted of the ponds and other sites several months ago where he, Council Members Tate and Chang met with Board Member Sanchez, Rosemary Kamei and members of the SCVWD staff. At that time, there was discussion with staff and board members regarding two issues: 1) recreational use, and 2) the high ground water levels. It was his understanding, at the time, that Water District staff agreed that these were entirely different and separate issues. He followed up immediately from the tour with a letter to Board Member Sanchez thanking him for the tour and taking the time to meet with the City Council. Water District staff and Board Members indicated that they had a plan in mind on how to deal with the high groundwater area and that they would present a timeline to the City Council. He informed the City Council that he wanted to get this timeline in writing, thus the reason for sending a letter to Board Member Sanchez and asking that this happen approximately 4-5 months ago. The only other subsequent conversation he had was with the Water District's community government affair staff asking where the response to his letter was. He was advised that his letter was in the hands of their attorneys. He indicated that this is the first response that he has received since then.

Action: *By consensus, the City Council **Received** the Update Provided by Santa Clara Valley Water District Regarding the Requested Time Frame.*

21. DOWNTOWN DESIGN PLAN UPDATE TASK FORCE

Director of Community Development Bischoff presented the staff report.

Council Member Carr stated that one of the things he would like to see in the Downtown Design Plan Update is how housing would be incorporated in the downtown. He did not believe that having one developer serving on the committee would be enough. He recommended having more than one local developer serving on the committee.

Mayor Pro Tempore Sellers recommended that individuals in the housing community be encouraged to participate, particularly if they may have a direct interest in the future in developing housing in the downtown area. He suggested that the individual be included in the "community at large" section and encourage a diversity without becoming too technical. He stated that he would hate to see this committee be short handed because the City could not find a second or third developer to serve on the committee.

Mayor Kennedy recommended that the community at large and local developers be lumped together, making this number five individuals.

Mayor Pro Tempore Sellers recommended that two council members serve on the task force and indicated that he would be interested in serving on this task force.

Council Member Tate stated an interest in serving on the task force as this is an area where there are a lot of different options and possibilities to be reviewed.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0): 1) **Approved** the Recommended Make Up of Task Force for the Downtown Design Plan Update, 2) **Authorized** the City Clerk to Advertise and Recruit Applicants for the Task Force, and 3) **Ratified** the Mayor's appointment of Mayor Pro Tempore Sellers as chairman and Council Member Tate as vice-chairman to the Downtown Design Plan Update Task Force.*

SECOND READING OF ORDINANCE

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **waived** the readings in full of Ordinance Nos. 1528, 1529, 1530, and 1531.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council **adopted** the below listed Ordinances as follows:*

22. **ADOPT ORDINANCE NO. 1528 NEW SERIES** - An Ordinance of the City Council of the City of Morgan Hill Enacting Chapter 3.32 (Massage Establishment) of Title 5 (Business Taxes, Licenses and Regulations) of the Municipal Code of the City of Morgan Hill Regarding Regulation of Massage Establishments by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

23. **ADOPT ORDINANCE NO. 1529 NEW SERIES AND ORDINANCE 1530, NEW SERIES**

ORDINANCE NO. 1529, NEW SERIES – An Ordinance of The City Council of The City of Morgan Hill Approving a Zoning Amendment to Establish a Precise Development Plan for a 15-unit Single-family Project on an 8.87-acre Site Located Along Malaguerra Avenue, North of Sullivan Court (APNs 728-35-016 & 017) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

ORDINANCE NO. 1530, NEW SERIES – An Ordinance of The City Council of The City of Morgan Hill Approving A Development Agreement for a 15-Unit Single-family Project on an 8.87-acre Site Located Along Malaguerra Avenue, North of Sullivan Court (APNs 728-35-016 & 017) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

24. **ADOPT ORDINANCE NO. 1531 NEW SERIES**
An Ordinance of The City Council of The City of Morgan Hill Amending a Planned Unit Development, Which Includes the Morgan Hill Plaza and Multifamily Residential Uses, at the Intersection of Monterey Road and Dunne Avenue (APN 767-09-018) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

RECONVENE TO CLOSED SESSION

Mayor/Chairman Kennedy reconvened the meeting to closed session at 9:49 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 10:20 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken on Closed Session Items 1, 2, 3 (1 case), 4, 7, 8 and 9. One case under closed session No. 3 was based on communication received from the Allivatos dated July 26, 2001. On the second, item under Closed Session Item 3, the City Council authorized the City to execute settlement agreement with Santa Clara County in the property tax allegation matter Closed Session No. 6 was pulled from the Agenda and was not discussed.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at p.m. 10:22 p.m.

MINUTES RECORDED AND PREPARED BY:

Irma Torrez, City Clerk/Agency Secretary